

ADVISORY

19-1: Gifts and Gratuities

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12/19/2019

ORGANIZATION:

State Ethics Commission

REFERENCED SOURCES:

[State Ethics Commission Regulations: 930 CMR 1.00 - 7.00 \(/service-details/state-ethics-commission-regulations-930-cmr-100-700\)](#)

TABLE OF CONTENTS

[I. Introduction \(#i-introduction\)](#)[II. Gifts Public Employees May Not Accept \(#ii-gifts-public-employees-may-not-accept-\)](#)[III. Gifts Public Employees May Accept \(#iii-gifts-public-employees-may-accept\)](#)[IV. Gifts from Lobbyists \(#iv-gifts-from-lobbyists-\)](#)[V. Frequently Asked Gift Questions \(#v-frequently-asked-gift-questions\)](#)[VI The Limits of this Advisory \(#vi-the-limits-of-this-advisory\)](#)

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I. Introduction

This Advisory, which updates and replaces *Advisory 04-02: Gifts and Gratuities*, explains how the conflict of interest law, G.L. c. 268A, applies when a public employee is offered a gift, meal, entertainment, travel expenses, or other things of value.

Public employees generally may not accept gifts worth \$50 or more (also called a gift of “substantial value”) given (1) for or because of the employee’s official position, or (2) for or because of any official action the employee has performed or will perform in the future. There are also some rules about acceptance of gifts worth less than \$50. Additional gift restrictions apply to statewide elected officials and major policymaking employees who are required to file a Statement of Financial Interests (“SFI”) with the State Ethics Commission (“Commission”). Exemptions to the gift restrictions can be found in the Commission’s regulations, 930 CMR 5.00. Some of these exemptions are discussed below. Additionally, public agencies may impose stricter gift restrictions on their employees than those set forth in the conflict of interest law. [See § 23\(e\) \(/service-details/gl-c-268a-the-conflict-of-interest-law-as-amended-by-c-194-acts-of-2011\).](#)

For purposes of this Advisory, a “public employee” is any person, paid or unpaid, elected, appointed or volunteer, who provides services to a state, county, or municipal agency or board, including “special” public employees. In the conflict of interest law, a “gift” is anything of value, including a meal, ticket to an event, gift card, loan, discount, travel expenses, etc., without something of equivalent value being given in return. The \$50 limit is calculated by adding together the value of all gifts from the same source within any 365-day period. Whichever is higher, the cost, the face value or the fair market value at the time of the gift, is used to determine the value of the gift.

II. Gifts Public Employees May Not Accept

Public employees are prohibited from soliciting or receiving anything with a value of \$50 or more for or because of the public employee's official position, unless it is authorized by statute or [regulation](#)

([/regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-08-gifts-worth-50-or-more-and-related-to-official-action-or-position-exem](#)

See [§ 23\(b\)\(2\)\(i\)](#). ([/service-details/conflict-of-interest-law-gift-restrictions-gl-c-268a-ssss-3-and-23b2](#)) A gift is given because of an employee's official position if it would not have been given had the employee not held the status, authority, or duties associated with the employee's public position.

- **Example:** Members of the planning board, conservation commission, zoning board of appeal, and the board of health are sent gift certificates worth \$50 from a construction company for "all their hard work over the last year."
- **Example:** The school district's maintenance staff offers free landscaping and painting services to the superintendent for his home.

Public employees are also prohibited from accepting anything worth \$50 or more for or because of any official act that the public employee has performed or will perform in the future. See [§ 3](#) ([/service-details/conflict-of-interest-law-gift-restrictions-gl-c-268a-ssss-3-and-23b2](#)).

- **Example:** A developer has concluded a meeting in the public employee's office during which they discussed an upcoming permit application. A week later, the public employee is invited to play golf at the developer's club which costs \$50 or more. The developer offers to pick up the cost. The two individuals do not socialize and have not played golf together until now. The permit application is pending.
- **Example:** A business association's representatives regularly meet at the State House with legislators who specialize in association issues. A few weeks after a significant association bill has been approved by the Legislature, and news reports indicate that the Governor will sign it, association representatives offer the bill's sponsors tickets to a concert. The face value of each ticket is \$50 or more.

Public employees are always prohibited from accepting corrupt gifts, commonly known as bribes, regardless of value. [See § 2](#) ([/service-details/gl-c-268a-the-conflict-of-interest-law-as-amended-by-c-194-acts-of-2011](#)).

- **Example:** A highway inspector may not receive money or anything else, regardless of value, from a vendor in exchange for lenient inspections of the vendor's work and timely processing of the vendor's paperwork.

III. Gifts Public Employees May Accept

The conflict of interest law does not prohibit public employees from accepting certain gifts. Some examples are listed below.

CAUTION: If the giver is a lobbyist, special restrictions may apply as explained below in Section IV.

Gifts worth less than \$50. If a gift is worth less than \$50 and is not a bribe, it may be accepted, but a disclosure may be required. See [930 CMR 5.07](#)

([/regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-07-gifts-worth-less-than-50-are-not-prohibited-but-a-disclosure-may-be-r](#)

Gifts worth more than \$50. If a gift is worth more than \$50 and is not a bribe, it may be accepted under certain circumstances, including the following:

- **Gifts unrelated to official action or position.** Generally, a public employee may accept a gift that is unrelated to official action or position. For example, in most cases, a public employee may accept a wedding gift from an old friend. Usually, no disclosure is required, unless the public employee recently took action regarding the giver or is called upon to take action regarding the giver soon after receiving the gift. See [930 CMR 5.06](#) ([/regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-06-no-violation-and-no-exemption-needed-gifts-unrelated-to-official-](#)

- **Retirement gifts.** Retirement gifts of substantial value given in anticipation of retirement may be accepted from the public as long as they are appropriate to the occasion and not a reward for a specific official action but instead reflect general goodwill. There are no restrictions on retirement gifts given after a public employee has retired. See [930 CMR 5.08\(10\)](#).
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- **Travel and event expenses.** Travel and event expenses, including the cost of admission to a conference or event, which are paid, reimbursed or waived by outside sources, may be accepted by public employees for work-related purposes under certain circumstances. In some situations, disclosures must be filed and/or approved in advance. See [930 CMR 5.08\(2\)-\(6\)](#).
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- **Unsolicited perishables.** Unsolicited perishables such as a fruit basket may be accepted on behalf of a public employee's agency if shared with all agency employees and/or the public, to the extent possible, thereby making them available for public rather than private use. See [930 CMR 5.08\(11\)](#).
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- **Class gifts to teachers.** A public school teacher may accept gifts during the school year totaling up to \$150 if a gift is identified as being from the class and the names of the givers and amounts given are not identified to the teacher. No disclosure is required. A teacher receiving a class gift may not knowingly accept additional gifts from the parents or students who participated in the class gift. See [930 CMR 5.08\(14\)](#).
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- **Gifts to a public agency.** Gifts to a public agency for the agency's use do not violate the conflict of interest law. For example, a gift of personal computers for use in a school does not violate the conflict of interest law because the gift is for public, rather than private use. The agency, however, must have the legal authority to accept gifts, and proper procedures must be followed to accept them.

IV. Gifts from Lobbyists

The financial disclosure law, G.L. c. 268B, [§ 6](#), prohibits statewide elected officials, major policymaking employees who are required to file an SFI, and members of their immediate family from accepting gifts of any kind from a lobbyist (also known as executive or legislative agents, as defined in the Lobbying Law, G.L. c. 3, § 39). For purposes of § 6 of the financial disclosure law, the definition of "legislative agent" includes the holder of a gaming license (i.e. casino) in Massachusetts as well as certain individuals and entities affiliated with the casino as set forth in G.L. c. 23K, § 14. Because § 6 prohibits all gifts, this provision is often called the "not a cup of coffee or stick of gum rule."

A very narrow exemption allows certain gifts from lobbyists given solely because of a family relationship or established personal friendship. See [930 CMR 5.09](#)

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V. Frequently Asked Gift Questions

1. How do I politely decline a gift?

To politely decline a gift, you may thank the giver and tell him or her that state law prohibits you from accepting valuable gifts given because of your official actions or official position.

2. What should I do if I receive a gift that I can't accept?

If you receive a gift that you cannot accept, you should return the gift to the sender.

3. What should I do if I am unable to return a gift to the sender or identify the giver?

If you are unable to return a gift to the sender or if you receive a gift of substantial value from an anonymous giver and have been unable to identify the giver you may give the gift to your public agency if your public agency has the legal authority to accept gifts. You should consult agency legal counsel as to whether your agency may accept gifts. As a last resort, you may give the gift to a local charity if your agency cannot accept it. If you donate the gift, you should get a receipt to document how the gift was disposed of and you should not claim the donation on your tax returns.

4. How do I determine the value of a gift?

The value of a gift is its fair market value (the price a willing buyer would pay a willing seller) at the time of the gift, its cost, or its face value, whichever is highest. See [930 CMR 5.05](#)
([/regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-05-substantial-value-how-determined](#)).

5. A person has given me several small gifts over the past year to thank me for my public service. Is that a problem?

It could be. In determining substantial value, the Commission may add together the value of all gifts by a person or entity to a public employee within any 365-day period. If the total is \$50 or more, the gifts are prohibited.

6. If a constituent sends me a gift consisting of two \$25 gift cards as a thank you for my official actions, may I accept them?

No. Because the gift cards are part of the same gift, the total value is \$50 and you may not accept them. Likewise, a gift card of \$50 could not be accepted.

7. A member of the public took me and a group of my colleagues out to lunch. How do I value the gift?

If a gift is given to a group of persons, the value to each person is the total value of the gift divided by the number of persons in the group, unless a person is able to show (with a receipt, or if not, an affidavit) that the cost of items consumed by that person and any guest, plus tip, was less than \$50. See [930 CMR 5.05](#)
([/regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-05-substantial-value-how-determined](#))

8. What should I do if I don't know what the value is of the gift that was given to me?

If you do not know the value of the gift, you should ask the giver or look up the item on the internet. If you are unable to determine the value of the gift, you should return the gift. However, you may generally assume that small handmade tokens of appreciation (such as a batch of cookies or a small craft item) are not of substantial value.

9. I attended a conference where a sandwich and a bag of chips was provided. How should I value this meal if the cost was not covered by the admission fee?

You may estimate the value based on what the take-out cost of the meal would be at a restaurant.

10. May I accept free meals or discounts offered to all public employees?

A discount of \$50 or more on goods or services is a gift of substantial value. However, a public employee may accept a public employee discount of substantial value if the discount is available to all public employees, to all public employees of a city, town, county, or state, or to a geographically defined class of public employees. See [930 CMR 5.08\(7\)](#).
([/regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-08-gifts-worth-50-or-more-and-related-to-official-action-or-position](#))

a public employee may not accept a public employee discount of substantial value available to only a subset of public employees such as first responders.

11. If a constituent gives me a ticket to an event as a thank you for my official actions, may I accept it if I purchase the ticket from the constituent at face value?

Only if tickets to the event are widely available to the public. Tickets that are limited in number and not readily available to the general public for purchase at face value (such as a ticket to the Superbowl, for example) may not be accepted.

12. May I accept financial assistance offered by a friend or family member?

Yes, provided the gift is being given for reasons other than your official position or official action. See [930 CMR 5.06](#)

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CAUTION: If the friend or family member is a lobbyist and you are an SFI filer, special restrictions may apply as explained above in Section IV.

13. May I accept a gift from a coworker?

Public employees generally may accept gifts from coworkers for holidays or occasions of personal, religious, or professional significance. However, with few exceptions, public employees may not give gifts to their superiors and the superiors may not accept such gifts. See [930 CMR 5.08\(8\)](#).

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14. May I accept a prize that I won at a random drawing at an event that I attended as part of my job?

Yes. See [930 CMR 5.08\(16\)](#).

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15. My agency has a policy allowing it to award gifts (such as gift cards) to meritorious employees in certain situations. May I accept them?

Yes. These kinds of gifts are considered a benefit of your employment with the agency.

16. May I accept gifts from a crowdsourcing fundraiser (i.e. GoFundMe)?

Yes, but only if the gifts are being given for reasons other than your official action or your official position, public resources are not used to create the crowdsourcing site, your official title/position is not referenced in the site, and no targeted solicitations to contribute to the fundraiser are made to individuals or entities under your official authority or with whom you have official dealings.

17. I want to start a fundraiser for a public employee who is experiencing a traumatic life event. Will the person and/or her family be able to accept the money raised?

Contact the Commission before doing so. Generally, a public employee will be able to accept the money as long as the money is raised for reasons other than the public employee's official position or official action, public resources are not used in the fundraiser, the public employee's official title/position is not referenced in the fundraiser, and no targeted solicitations are made to individuals or entities under the public employee's official authority or with whom the public employee has official dealings.

18. May I accept a gift from a lobbyist?

If you hold a position which requires you to file an SFI, you may not accept a gift of any value from a lobbyist unless the requirements of the very narrow exception in [930 CMR 5.09](#)

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19. What should I do if I am offered or receive a gift and a matter comes before me in my public position involving the giver?

If you have been offered or received a gift (regardless of value) and a matter comes before you in your public position involving the giver in which you can be fair and impartial, you may need to file a [disclosure pursuant to § 23\(b\)\(3\)](#)

(</files/2017-08/disc-23b3-favor-or-influence-new2-7-10-12%20%2814%29.doc>) before taking action on the matter to dispel the “appearance” of a conflict of interest. If you cannot perform your duties fairly and objectively, or if you do not wish to file a disclosure, you must recuse yourself. Under Section 23(b)(3), the Commission considers all the circumstances, including the type and value of the gift, the timing of the gift, the substance and significance of the matter before the public employee, and the personal relationship between the giver and the recipient. See also [930 CMR 5.07](#)

(</regulations/930-CMR-500-exemptions-from-mgl-c-268a-and-mgl-c-268b-related-to-gifts#5-07-gifts-worth-less-than-50-are-not-prohibited-but-a-disclosure-ma>

VI The Limits of this Advisory

This Advisory, which is intended to summarize the Commission’s advice concerning compliance with the conflict of interest law and financial disclosure law, is informational in nature. It is not a substitute for advice specific to a particular situation, nor does it mention every aspect of the law that may apply to a particular situation. For specific questions, public employees should contact their state, county or municipal counsel (as applicable), or the Commission’s Legal Division by submitting an [online request](#) (</files/documents/2019/01/03/requestadviceform.pdf>), by calling the Commission at (617) 371-9500 and [asking to speak to the Attorney of the Day](#) (</how-to/get-advice-about-how-the-conflict-law-applies-to-you>), or by submitting a written request for advice to the Commission at One Ashburton Place, Room 619, Boston, MA 02108, Attn: Legal Division.

Issued: December 19, 2019

This Advisory updates and replaces *Advisory 04-02: Gifts and Gratuities*, issued May 12, 2004.

REFERENCED SOURCES:

[State Ethics Commission Regulations: 930 CMR 1.00 - 7.00](#)

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